

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

ARTHUR DONALD DARBY, JR.,

Plaintiff,

v.

// CIVIL ACTION NO. 1:14CV201
(Judge Keeley)

FEDERAL BUREAU OF INVESTIGATION,

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATIONS (DKT. NO. 9) AND
DISMISSING COMPLAINT WITHOUT PREJUDICE

On November 24, 2014, pro se plaintiff Arthur Donald Darby, Jr. ("Darby"), filed a one-page complaint in this Court naming as defendant the Federal Bureau of Investigation (Dkt. No. 1). The Clerk sent Darby a notice of deficient pleading on November 24, 2014 (Dkt. No. 3), and an amended notice of deficient pleading the following day (Dkt. No. 4). Both notices of deficient pleading were returned as undeliverable on January 30, 2015, and February 3, 2015 (Dkt. Nos. 11, 12).

On December 18, 2014, Magistrate Judge John Kaull issued an order to show cause, ordering Darby to show cause within fourteen days why his complaint should not be dismissed for failure to comply with the amended notice of deficient pleading (Dkt. No. 5). Magistrate Judge Kaull's order to show cause was returned as undeliverable on December 31, 2014 (Dkt. No. 7).

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On January 6, 2015, Magistrate Judge Kaull issued a report and recommendation ("R&R"), recommending that the Court dismiss Darby's complaint without prejudice for failure to prosecute (Dkt. No. 9). In the R&R, Magistrate Judge Kaull recounted his numerous attempts, discussed above, to contact Darby. Id. at 1-2. Darby has made no attempt to collect the notice of deficient pleading and amended notice of deficient pleading, and the show cause order was returned as undeliverable. Id. at 2. Therefore, Magistrate Judge Kaull recommended that the Court dismiss Darby's complaint for failure to prosecute. Id. Magistrate Judge Kaull's R&R was returned as undeliverable on January 26, 2015 (Dkt. No. 10). Darby has not objected to the R&R.¹

District courts are "vested with inherent authority to dismiss an action for plaintiff's failure to prosecute it with reasonable diligence." Timmons v. United States, 194 F.2d 357, 359 (4th Cir. 1952). The decision of whether to dismiss a case for failure to

¹ When reviewing a magistrate judge's R&R pursuant to 28 U.S.C. § 636, the court reviews de novo only that portion of the R&R to which a timely objection has been made. 28 U.S.C. § 636(b)(1)(C). It will uphold those portions of a recommendation as to which no objection has been made unless they are "clearly erroneous." See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

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prosecute is "within the trial court's sound judicial discretion.

. . ." Id.

The Court agrees with Magistrate Judge Kaull that Darby has failed to diligently prosecute his case. Although all mail sent to Darby by the Court has now been returned as undeliverable, much of it sat in the post office for over a month waiting for Darby to retrieve it, which he failed to do (Dkt. No. 9 at 2). Therefore, given the Court's numerous failed attempts to locate Darby, it **ADOPTS** the R&R (Dkt. No. 9) and **DISMISSES** the complaint without prejudice. The Court **DIRECTS** the Clerk to remove the case from the Court's active docket.

It is so **ORDERED**.

The Court **DIRECTS** the Clerk to transmit copies of this order to counsel of record, and to the pro se plaintiff, certified mail, return receipt requested, and to enter a separate judgment order.

DATED: February 5, 2015.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE